

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 30 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JOSE MARIANO DE MARCOS GARCIA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 21-437

Agency No.  
A216-554-012

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

May 16, 2023\*\*

Before: BENNETT, MILLER, and VANDYKE, Circuit Judges.

Jose Mariano De Marcos Garcia, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1252. We review de novo the legal question of whether a particular social group is cognizable, except to the extent that deference is owed to the BIA’s interpretation of the governing statutes and regulations. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241-42 (9th Cir. 2020). We review for substantial evidence the agency’s factual findings. *Id.* at 1241. We deny the petition for review.

In his opening brief, De Marcos Garcia fails to challenge the agency’s dispositive determination that his asylum application was time-barred and that he did not establish changed or extraordinary circumstances to excuse the untimely filing. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013). De Marcos Garcia also fails to challenge the agency’s denial of CAT protection. *Id.* Thus, we deny the petition for review as to his asylum and CAT claims.

The agency did not err in concluding that De Marcos Garcia failed to establish membership in a cognizable particular social group. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (in order to demonstrate membership in a particular social group, “[t]he applicant must ‘establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question’” (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014))); *see also Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151-52 (9th Cir. 2010) (“returning Mexicans from the United States” does not constitute a

particular social group). In his opening brief, De Marcos Garcia does not challenge the agency's conclusions regarding the proposed particular social groups based on being a witness to a crime and based on opposition to criminal groups and gang recruitment. *See Lopez-Vasquez*, 706 F.3d at 1079-80.

Substantial evidence supports the agency's determination that De Marcos Garcia otherwise failed to establish he was or would be persecuted on account of a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (an applicant's "desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground"). Thus, De Marcos Garcia's withholding of removal claim fails.

The temporary stay of removal remains in place until the mandate issues.

**PETITION FOR REVIEW DENIED.**